

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR  
WARMING PRODUCT LIABILITY  
LITIGATION

MDL No.: 15-md-02666 (JNE/FLN)

This Document Relates To:

DAVID HARKLEROAD, Individually and  
on Behalf of the Estate of SANDRA K.  
HARKLEROAD,

Civil Action No.: 16-CV-01986-JNE-FLN

Plaintiff,

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, David Harkleroad, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 590], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:<sup>1</sup>

1. In June of 2015, Mr. David Harkleroad contacted undersigned counsel regarding an infection and subsequent treatment to his widow, Mrs. Sandra Harkleroad, allegedly caused by the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Mr. Harkleroad reported to counsel that Mrs. Sandra Harkleroad had passed away on February 16, 2013.
3. Counsel worked to obtain medical records, billing records, and other necessary documentation to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.

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<sup>1</sup> See Ex. A, Declaration of Donald C. Green II in Support of Plaintiff's Response to Defendants' Motion to Dismiss.

4. On June 16, 2016, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the claim of Mrs. Sandra Harkleroad's estate.
5. Efforts to contact Mr. Harkleroad to inform him of the Plaintiff Fact Sheet and other necessary steps of the litigation immediately after filing this action were unsuccessful, including phone calls on the following dates:
  - June 16, 2016
  - June 20, 2016
  - June 21, 2016
  - July 6, 2016
  - July 7, 2016
  - July 11, 2016
  - July 12, 2016
  - July 20, 2016
  - July 29, 2016
6. Additionally, a contact letter was sent on July 20, 2016 requesting that Mr. Harkleroad contact his counsel's office at his earliest convenience.
7. On August 2, 2016, counsel spoke with Mrs. Peggi Harkleroad, whom Mr. Harkleroad had married after the injured party's passing. Mrs. Peggi Harkleroad reported that Mr. Harkleroad had passed away.
8. Mrs. Peggi Harkleroad reported that Mr. Harkleroad and Mrs. Sandra Harkleroad, the injured party, did not have any children together and that she was not aware of any surviving member of Mrs. Sandra Harkleroad's family. She also stated that she had no detailed information or other documentation regarding Mrs. Sandra Harkleroad.

9. Subsequently, counsel followed up with Mrs. Peggi Harkleroad in an attempt to acquire more information on November 4, 2016 and January 21, 2017. On both occasions, Mrs. Peggi Harkleroad repeated that she had no additional information or documentation to offer regarding Mrs. Sandra Harkleroad.
10. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim or to locate someone able to verify the limited information that counsel currently possesses.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice, but stayed, and that any potential heir or interested party of Mrs. Sandra Harkleroad with standing be given a reasonable amount of time to contact counsel to provide the necessary information to submit a Plaintiff Fact Sheet and continue the case.

Dated: July 13, 2017

KENNEDY HODGES, LLP

By: /s/ David W. Hodges  
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ATTORNEYS FOR PLAINTIFF

### **CERTIFICATE OF SERVICE**

This is to certify that on July 13, 2017 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges  
David W. Hodges